

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In re CASSAVA SCIENCES, INC.
SECURITIES LITIGATION

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Master File No. 1:21-cv-00751-DAE

CLASS ACTION

This Document Relates To:

ALL ACTIONS

**PLAINTIFFS' OPPOSED MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF
PLAINTIFFS' LETTER BRIEF TO THE HONORABLE HENRY J. BEMPORAD**

Pursuant to Local Rule CV-7(e) and this Court’s March 28, 2025 order requesting briefing on the common interest doctrine (ECF 307) (the “Order”), lead plaintiff Mohammad Bozorgi and additional plaintiffs Ken Calderone and Manohar K. Rao (collectively, “Plaintiffs”) respectfully submit this motion for leave to file a reply (the “Motion for Leave”) in support of their letter brief to the Honorable Henry J. Bemporad dated April 11, 2025 (ECF 311) (the “Letter Brief”).

I. INTRODUCTION

Plaintiffs respectfully request leave to file a short reply letter to address new factual and legal arguments regarding the common interest doctrine raised for the first time in Defendants’¹ Response (ECF 312) (the “Response”) to Plaintiffs’ Letter Brief. In their Response, Defendants claim, without evidentiary support, that the communications at issue between Burns and Dr. Hoau-Yan Wang (“Wang”) were directed by counsel, and, therefore, the privilege remains intact. *See* Response at 2-3 (asserting the communications were sent “*on behalf of* an attorney”).² This argument was not previously raised during the parties’ meet and confers. Plaintiffs, in learning Defendants’ position for the first time in their Response, have not had an opportunity to address it and therefore respectfully request leave to file their proposed two-and-a-half page reply, attached to the Motion for Leave as Exhibit A (the “Reply”).³

II. LEGAL STANDARDS

Local Rule CV-7(e) allows reply briefs to be submitted without leave of court. *See* L.R. CV-7(e); *see also* *C&M Oilfield Rentals, LLC v. Location Illuminator Techs., LLC*, 2020 WL

¹ “Defendants” refers collectively to Cassava Sciences, Inc. (“Cassava”), Remi Barbier, Lindsay Burns (“Burns”), and Eric Schoen.

² Citations are omitted and emphasis is added unless otherwise noted.

³ Pursuant to Local Rule CV-7(g), Plaintiffs conferred in good faith with counsel for Defendants regarding Plaintiffs’ request for leave to file the Reply. Defendants stated they would oppose any motion seeking leave to file the Reply.

4708714, at *1 (W.D. Tex. July 13, 2020) (noting the local rules “broadly permit parties to file replies in support of motions after an opposing party has filed a response”). Magistrate Judge Bemporad’s Order requested briefing from the parties regarding “the privilege claim with regard to communications between Dr. Lindsay Burn[s] and Dr. Hoau-Yan Wang where counsel was not included.” ECF 307 at 1. The Order did not set a deadline for Plaintiffs to file a reply, nor did it prohibit a reply. *See id.* Therefore, although reply briefs may ordinarily be filed without leave of court under Local Rule CV-7(e), out of an abundance of caution, Plaintiffs respectfully seek leave to file their Reply.

Courts in this district regularly grant such leave. *See, e.g., Midkiff v. Prudential Ins. Co. of Am.*, 571 F. Supp. 3d 660, 664 (W.D. Tex. 2021) (granting leave to file reply); *Sammons v. Economou*, 2018 WL 7351696, at *1 (W.D. Tex. Oct. 31, 2018) (same); *Clark v. Centene Corp.*, 2015 WL 6962894, at *1 (W.D. Tex. Nov. 10, 2015) (same). Reply briefs may be used “to address[] matters presented in a motion and response.” *Deutsche Bank Nat’l Tr. Co. as Tr. for Agent Sec. Inc. v. McGowen*, 2018 WL 8059314, at *5 (W.D. Tex. June 21, 2018) (Ezra, J.). Therefore, Plaintiffs’ Reply, which merely rebuts the new arguments Defendants raised in their Response, should be permitted.

III. ARGUMENT

Plaintiffs’ brief Reply is limited to addressing the new legal and factual arguments and inapposite cases in Defendants’ Response. Specifically, the Reply demonstrates that Defendants have failed to provide any factual support for their new argument that the communications between Wang and Burns were sent *on behalf of* counsel – a standard set forth in Defendants’ own case law. There is no evidence that attorneys had any involvement in the communication at issue between Burns and Wang, let alone that attorneys directed the communications. Moreover, the remaining authorities Defendants cite are distinguishable as they either do not address the common

interest privilege or do not address whether communications without attorney involvement may remain privileged under the common interests doctrine. Because the Reply rebuts “new argument[s] raised by the opposing party in a response,” the Reply should be considered. *Anonymous Media Rsch. Holdings, LLC v. Roku, Inc.*, 2024 WL 4182592, at *3 (W.D. Tex. July 10, 2024).

IV. CONCLUSION

For all of the reasons stated above, Plaintiffs respectfully request that the Court enter their proposed order granting Plaintiffs leave to file the Reply attached hereto as Exhibit A.

DATED: May 2, 2025

Respectfully submitted,

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